

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

KENNETH E. SMITH

Defendant.

04 CR 10101
CRIMINAL NO.

VIOLATIONS:

26 U.S.C. §7203 (Failure to File Returns)

INFORMATION

The United States Attorney charges that:

GENERAL ALLEGATIONS

1. At all times material to this Information, defendant KENNETH E. SMITH ("SMITH") was an individual who resided in Osterville and subsequently in Centerville, Massachusetts.

2. At all times material to this Information, SMITH was a physician who owned and operated a medical practice specializing in obstetrics and gynecology. SMITH operated his practice as a Sub-Chapter S corporation under the name "Hyannis OB-GYN Associates, P.C." (hereafter, "Hyannis OB-GYN").

Failure to File Personal Returns

3. SMITH received income, including income from the operations of Hyannis OB-GYN, in each of the years 1997, 1998 and 1999. The amount of gross income that SMITH received in each of these years exceeded the minimum amount necessary to trigger a legal obligation on his part to file an individual income tax return with the Internal Revenue Service.

4. Notwithstanding his receipt of such income, SMITH did not timely file tax returns

with the Internal Revenue Service for any of the years 1997, 1998 or 1999. Although SMITH sought and obtained an extension until August 17, 1998 to file his 1997 return, he filed no return by that date. He neither sought extensions nor filed timely returns in either 1998 or 1999.

5. On or about August 16, 2002, approximately eighteen months after the IRS notified SMITH that he was the subject of a criminal investigation, SMITH filed Forms 1040, U.S. Individual Income Tax Returns, for 1997, 1998 and 1999. He also filed informational returns, Forms 1120S, for Hyannis OB-GYN.

6. The tax returns filed by SMITH for 1997, 1998 and 1999 reported that he and his wife (married, filing jointly) had earned gross income of approximately \$265,143 in 1997, \$250,094 in 1998 and \$309,618 in 1999. The amount of the tax due and owing by SMITH on this income is set forth in the following table:

	<u>1997</u>	<u>1998</u>	<u>1999</u>
Gross Income	\$265,143.00	\$250,094.00	\$309,618.00
Taxable Income	\$251,338.00	\$205,530.00	\$291,071.00
Total tax	\$74,550.00	\$59,279.00	\$96,479.00
- Paid withholding	\$0.00	\$14,736.00	\$0.00
- Estimated tax payments	\$11,100.00	\$0.00	\$0.00
- Wife's portion of tax	\$0.00	\$0.00	\$29,479.00
Tax due and owing by SMITH	\$63,450.00	\$44,543.00	\$67,407.00

7. Until the commencement of the criminal tax investigation, SMITH filed no returns reporting the foregoing income. Nor did he pay the tax shown above as due and owing.

COUNTS ONE through THREE**(Failure to File Returns – 26 U.S.C. § 7203)**

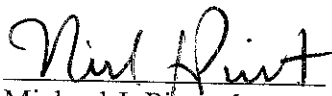
8. The United States Attorney re-alleges and incorporates by reference paragraphs 1 through 7 of this Information and further charges that:

9. During the calendar years 1997, 1998 and 1999, the defendant KENNETH E. SMITH, a resident of Massachusetts, had and received gross income equal to or exceeding the approximate sums set forth below; that by reason of such gross income he was required by law, following the close of the calendar year, and on or before the filing dates listed below, to make an income tax return to the Director, Internal Revenue Service Center, at Andover, Massachusetts, in the District of Massachusetts, or to the District Director of the Internal Revenue Service at Boston, Massachusetts, or other proper officer of the United States, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well-knowing and believing all of the foregoing, he did willfully fail to make an income tax return to said Director of the Internal Revenue Service Center, to said District Director of the Internal Revenue Service, or to any other proper officer of the United States, as listed below:

<u>Count</u>	<u>Year</u>	<u>Filing Date</u>	<u>Gross Income</u>
1	1997	8/17/98	\$265,143.00
2	1998	4/15/99	\$250,094.00
3	1999	4/17/00	\$309,618.00

All in violation of Title 26, United States Code, Section 7203.

MICHAEL J. SULLIVAN
United States Attorney

By: 
Michael J. Pineault
Assistant U.S. Attorney
One Courthouse Way, Suite 9200
Boston, MA 02210

Dated: April 1, 2004